

SUBMISSION TO THE INQUIRY INTO AUSTRALIA'S NATIONAL PARKS,  
CONSERVATION RESERVES AND MARINE PROTECTED AREAS

AUGUST 31<sup>ST</sup>, 2006

CARNARVON

Submission presented for the Lefroy Family

By Phillip Kendrick

*Tabled: Mr Kendrick  
Carnarvon  
31 August 2006*

## SUBMISSION TO THE INQUIRY INTO AUSTRALIA'S NATIONAL PARKS AND MARINE PROTECTED AREAS

Submission from the Lefroy family of Ningaloo Station

### **Station Location**

Ningaloo Station Homestead is situated on the coastal strip approximately 32 km west of the Minilya Exmouth Road. The station borders the Ningaloo Marine Park and extends from the Defence land in the north and Cardabia Station in the south. The station has a total area 49,731 hectares. Interestingly, the Marine Park currently carries the name of the station – the station was named before the reef.

### **Station History**

Ningaloo was initially taken up as a pastoral lease in 1889 and the Lefroy family owned and managed the lease for three generations since the 1930's.

In 1995 the Ministers for Lands, Doug Shave offered the Lefroy Family the right to renew the Ningaloo Pastoral Lease. With the blanket conditions which covered all stations right to renew their leases after 2015, this right was granted and the Lefroys offered the right to the renewal of the lease after the expiry date of 2015. The Lefroys accepted the offer and were informed that the next rent review would be 1<sup>st</sup> July 2019.

This submission deals specifically with the item (e) of the Terms of Reference for this Select Committee

**(e) the record of government with regard to the CREATION and MANAGEMENT of national parks, other conservation reserves and marine protected areas.**

and to a lesser extent item (d) the responsibilities of governments with regard to the creation and management of national parks.

## **Background**

A State Legislative Council Select Committee appointed on 1 st December 1994, chaired by Graham Edwards addressed issues relating to the possible expansion of the Cape Range National Park and other steps that might be required to discover the importance of the park to tourism, mining, petroleum fishing and other industries in the shires of Exmouth and Carnarvon.

Recommendation 6 of this report is that the state government should negotiate the extension of the Cape Range Park to include Ningaloo Pastoral Station. A fair and reasonable price should be offered for the lease. It also states that Mrs Billie Lefroy and her daughter Jane should be offered lifetime tenancy of the Ningaloo homestead and its immediate surrounds. Ms Jane Lefroy was also to be offered permanent employment with CALM in a position commensurate with her accumulated local knowledge and long term involvement with in the area. Further negotiations with the Lefroy family should be carried out by a senior officer of CALM appointed by the Minister or the Chief Executive Officer.

These recommendations have never been addressed by the State Government. This has lead to uncertainty for the Lefroys and frustration with the governments processes.

On the 27<sup>th</sup> November 2002 the Minister for Lands Allannah MacTiernan wrote to the Lefroy family advising us that her government intended to excise 22,202 from the pastoral lease for the purposes of the Ningaloo Marine Park. The acquiring authority was listed as the Department for Conservation and Land Management currently being amalgamated to become the Department of Conservation and Environment. There had been **no negotiation** by “a senior officer of CALM appointed by the Minister or the Chief Executive Officer”. The letter from Minister MacTiernan stated that there would be no reduction in rent payable as a result of the excision which relates to 48% of the station area. This correspondence outlined the following options available to us to resolve this matter were the following;

1. Accept the exclusion conditions.
2. Withdraw from the renewal of the pastoral lease as from July 1<sup>st</sup> 2015.
3. Enter into negotiations on the area to be **excluded from the pastoral lease**.

The two year negotiation period commenced on the 7<sup>th</sup> December 2002.

Ningaloo station advised the Minister we wished to enter into negotiations on the **area to be excised** especially as the area was 48% of the total lease and included our homestead (built 1912) seven mills, tanks, bores, watering troughs, the shearing sheds (built 1912) and the shearers quarters and associated infrastructure, workshop, machinery and engine shed, the Point Cloates Lighthouse and quarters (listed by the Heritage Council under the register of Heritage Places P05491) the Norwegian Whaling Station, ( Heritage Council Listing P04231). All the holding paddocks for the station and most of the good pastoral land is included within the proposed excision. In effect this excision makes the station unviable.

On 25<sup>th</sup> February 2004, **fourteen months into the negotiating period** a meeting was convened by the Department of Planning and Infrastructure to **explain** the negotiation process and the requirement of us for a submission.

The process was for senior government officials and the Lefroys to come to agreement on alterations to the excision boundary and the inclusion (or not ) of the station infrastructure. This proposal was then to pass to a group of bureaucrats (the ENSC, Exclusion Negotiations Steering Committee) which comprised the CEO of the department principally assisting the Minister in the administration of the LAA, the Chair of the Pastoral Land Board, and the Executive Director of the Department of Conservation and Land Management to oversee the negotiations and ensure that the outcomes were equitable and to make final recommendations to the Minister.

Considerable concern was expressed to government agencies as no progress was made towards negotiations in the following three months despite the tightening time frame now being 17 months into the twenty four month negotiation period. Despite repeated requests by us to arrange a meeting no further contact was made by anyone until a meeting was held at Exmouth Gulf Station on 20<sup>th</sup> May 2004.

A detailed report was compiled by Ningaloo Station which addressed matters such as the access to the station infrastructure and quarters by means of a lane way across the excision area, the joining of the homestead to the portion of the lease not excised, access of the homestead to the household well (bearing in mind the previous Select Committee report which indicated that the we could still reside in the homestead) access to watering points and use of existing laneways and holding paddocks.

This submission was duly hand delivered to the Department of Planning and Infrastructure Officer, Dennis Millan, based in Midland, at the meeting at Exmouth Gulf Station.

You can imagine our surprise when we were advised **PRIOR TO THE COMMENCEMENT** of the first official meeting and after completing our submission that the Minister for Planning had signed the Gascoyne Coast Exclusion Policy on the 10<sup>th</sup> May, **ten days before our first official meeting.**

The Gascoyne Coast Exclusion Policy is purported to ensure a uniform approach to all pastoral lease exclusions between Ningaloo and Wooramel and that the exclusion boundaries were **not negotiable** whilst the lawful pastoral improvements within the boundary are negotiable. The only exception would be to provide for homesteads and associated infrastructure that are not to be **excluded** from the pastoral lease.

This meant that if we had infrastructure inside the zone we were in a position to negotiate a method to include it in the pastoral lease - this did not apply to Ningaloo. Further more it expressly stated that homesteads were to be included in the pastoral lease – again this could not apply to Ningaloo as there was an inability to be able to provide access from the homestead to the lease because of the designation of a tourist node (Ningaloo Coast Regional Strategy – Carnarvon to Exmouth) effectively blocking access from the homestead to the remaining lease. The water supply for the homestead was also within the boundaries of the tourist node.

There was only three meetings held in this ‘NEGOTIATION’ process - 20<sup>th</sup> May 2004, 22<sup>nd</sup> June, 2004 and 11<sup>th</sup> November, 2004. At the 11<sup>th</sup> November meeting there was an introduction of a voluntary surrender of the lease in 2006 with an inducement of the ability to develop a minor tourist node if this early surrender was arranged. This concept had been not previously been discussed. We had previously been told that the Ningaloo Coastal Strategy had no impact on the excision for the Park. At the conclusion of the meeting we were informed that this was the final meeting. We had no time to consider the proposal.

The whole negotiation process was supposed to be undertaken in good faith. Nothing could be further from the truth. The process has been completely unworkable. The excision line has remained inflexible, the negotiation guidelines ignored or moulded to suit governments position. There was no uniformity in dealing with the coastal stations and there has been no tangible environmental purpose for the government requiring 48% of Ningaloo Station for addition to the Ningaloo Marine Park.

The exclusion of 48% of Ningaloo Station up to 22.5 kilometres inland from the coast for the purposed of the Ningaloo Marine Park has been exposed as a complete fraud as the Governments own document the Ningaloo Coast Regional Strategy – Carnarvon to Exmouth – proposes five tourist development nodes on Ningaloo Station.

Your committee is currently addressing

**e) the record of government with regard to the CREATION and MANAGEMENT of national parks, other conservation reserves and marine protected areas.**

We believe that the process undertaken by the Western Australian State Government has been flawed and inequitable. The process, under the cloak of establishing a Marine Park, has sort to remove the legitimate lease holders from exercising a right given to them by the Minister in 1995. This committee has the responsibility to inquire into the funding and resources available for marine parks but it is not constrained from commenting on the record of governments in negotiation processes. The committee has the ability to discover if negotiations caused financial hardship and how the frustration of being unable to advance negotiations has affected the leasees. In the case of Ningaloo Station the owners found themselves negotiating on tourism nodes and development under a guise of the reason for the land being excised for the Ningaloo Marine Park (**Reference – letter from the Minister For Lands 27<sup>th</sup> November 2002**) This letter mentioned previously, states the reason for land being acquired was for the Ningaloo Marine Park. This committee has the ability, indeed the responsibility, to discover if the extension of the marine park was used by the state government as a defacto method of acquiring the lease at no cost to the State. . (see terms of reference (e) )



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## MINISTER FOR PLANNING AND INFRASTRUCTURE

HON ALANNAH MacTIERNAN  
BA LLB BJuris JP MLA

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Bettye Duffel & Noel Corinthia Pierce Lefroy  
Ningaloo Station  
CARNARVON WA 6701

Dear Pastoralist

### **RENEWAL OF YOUR PASTORAL LEASE FOLLOWING EXPIRY ON 30 JUNE 2015**

You (or your predecessor in title), as the holder of a pastoral lease due to expire on 30 June 2015, have previously accepted an offer by the Minister for Lands ("Offer") for the renewal of your lease after this date.

The Offer was subject to the following conditions:

1. *compliance with lease conditions, including stocking requirements and maintenance of infrastructure, at the time of expiry on 30 June, 2015;*
2. *there being no Soil Conservation Notices or other orders by the Soil and Land Conservation Commissioner in force;*
3. *there being no unfulfilled requirements of the Soil and Land Conservation Commissioner and/or the Pastoral Lands Board in relation to observance of lease conditions under the Soil and Land Conservation Act and the Land Administration Act; and*
4. *exclusion of areas from the existing lease that may be required for public works, conservation, national park, nature reserve or other Government purposes.*
5. *the annual lease rental for the lease up to 30 June 2015 will apply to the renewed lease. The rental review period for the renewed lease will continue to apply every five years in accordance with section 123(4) of the LAA.*

*The next rent review for the renewed lease will be on 1 July 2019."*

The Land Administration Amendment Act 2000 amended the Land Administration Act 1997. The effect of these Acts sets out the procedure by which land may be excluded from your renewed or extended pastoral lease 'for a public purpose', as from 1 July 2015.

## NOTICE OF EXCLUSION

Pursuant to condition 4 of the Offer and those Acts and in my capacity as Minister for Lands under the *Land Administration Act 1997*, I now give NOTICE that the land described below will be excluded from the area of your pastoral lease when the renewal or extension of it commences on 1 July 2015, and the following applies:

(a) Description of land to be excluded	<i>That area coloured pink and comprising an area of approximately 22,202 hectares, as shown on Ningaloo Exclusion Sketch, a copy of which is attached to this notice and the original of which is available for inspection at the Pastoral Lands Board, 3<sup>rd</sup> floor, DOLA Building, Midland Square, Midland, WA.</i>
(b) Reason for land being excluded (ie. "public purpose")	<i>Ningaloo Marine Park. (Acquiring Authority – Department of Conservation &amp; Land Management. Contact Officer - Gordon Wyre, A/Director of Nature Conservation).</i>
(c) Any reduction in rent as a result of the exclusion	<i>The annual rent that would have applied to your pastoral lease (on its current boundaries) from 1 July 2015 (but for this exclusion) will be <u>reduced by 0.00%</u>.</i>
(d) Any variation of lease conditions as a result of the exclusion	<i>None.</i>

### ACTIONS YOU MAY TAKE

You must take one of the following actions in relation to this notice:

1. Accept the above exclusion conditions.
2. Withdraw from the renewal or extension of your pastoral lease as from 1 July 2015.
3. Enter into negotiations on the area to be excluded from the lease, or the rent to be paid under it as a result of the exclusion.

Please note, where the homestead is included within the area of exclusion, it is proposed to offer owner occupiers of current pastoral leases other tenancy arrangements for their existing homestead. Enclosed with this letter is a form setting out the three options. Please indicate your preferred option, sign the form and return it to the address set out on the form as soon as possible.

Briefly, the consequences of each option is as follows:

1. If you choose **option 1**, and accept the above exclusion conditions:
  - You agree to the conditions set out in this letter, so that the area set out in this notice will be excluded from your pastoral lease from 1 July 2015.
  - You are bound by your decision and cannot change it later.



- Nothing further will need to be done at this stage. When 30 June 2015 draws nearer, the amount of compensation payable for the lawful improvements on the area being excluded will need to be determined, and you will be contacted in relation to this.
2. If you choose **option 2**, and withdraw from the renewal or extension of your pastoral lease as from 1 July 2015:
- You do not agree to the conditions set out in this letter, and you no longer wish to have your lease renewed or extended on 1 July 2015. From that date, you will not have this pastoral lease at all.
  - You are bound by your decision and cannot change it later.
  - Nothing further will need to be done at this stage. When 30 June 2015 draws nearer, the amount of compensation payable for the lawful improvements on your pastoral lease will need to be determined, and you will be contacted in relation to this.
3. If you choose **option 3**, and enter into negotiations on the area to be excluded from the lease, or the rent to be paid under it as a result of the exclusion:
- You do not agree to the conditions set out in this letter, and you wish to negotiate the terms of those conditions in relation to the area being excluded and/or any resulting reduction in the rent payable.
  - During the course of those negotiations, you can accept the conditions as negotiated.
  - If you wish to negotiate on the area to be excluded from the lease, then you will need to negotiate with the Acquiring Authority in the first instance, before the matter is referred to the Pastoral Lands Board and then on to me.
  - If you wish to negotiate on the rent to be paid as a result of the exclusion, you will need to notify DOLA (PLB Support) who will refer the matter to the Valuer General for negotiation, before the matter is referred to the Pastoral Lands Board and then on to me.
  - In some instances alternative management regimes may be considered for the areas to be excluded. Lessees are encouraged to use the two-year negotiation period to input into possible alternative management agreements with the Acquiring Authority.
  - If at the end of two years from this letter, agreement has not been reached on variations to the conditions set out in this letter, then you can accept the conditions as set out in this letter. Otherwise you will be taken to have withdrawn from having your lease renewed or extended on 1 July 2015. In this case, you will not have this pastoral lease at all, from that date.
  - This two-year period can be extended by regulations made by Parliament during the two-year period, so there is an ability to extend the negotiating period if necessary.

If you sell or transfer your pastoral lease between now and 30 June 2015, the purchaser of your lease will also be bound by the decision that you have made. If you have chosen **option 3**, then your purchaser will be able to take over negotiations on the variations to the conditions set out in this letter.

### COMPENSATION

If land is excluded from your pastoral lease from 1 July 2015, then you are entitled to receive as compensation an amount determined by the Valuer General to be the market value on the date of expiry (ie on 30 June 2015), of any lawful improvements existing on the land that is being excluded.

If:

- you choose **option 2** and withdraw from the renewal or extension of your lease in 2015, or
- you choose **option 3**, but do not successfully conclude negotiations on variations to the conditions set out in this letter within 2 years (or longer period allowed) from this letter and you are taken to have withdrawn from the renewal or extension of your lease in 2015,

then you will be entitled to receive as compensation an amount determined by the Valuer General to be the market value on the date of expiry (ie on 30 June 2015), of any lawful improvements existing on the land in your pastoral lease.

In other words, any compensation payable is determined on the market value of lawful improvements on the pastoral lease as at 30 June 2015, and is payable in 2015.

In this case, there may be an opportunity, as that date draws nearer, to consider allowing some improvements to be removed from the pastoral lease (or part of it), before it expires in 2015. You will be contacted closer to the time, in relation to this.

You should be aware that in the lead up to 2015, the normal administration and development of the State may require the taking (compulsory acquisition or resumption) of part or the whole of the interest in your pastoral lease for a 'public work'. The Government has always had this power under relevant legislation, and nothing in this notice prejudices the State's ability in this regard.

I look forward to receiving your advice as to which option you choose.

Yours sincerely



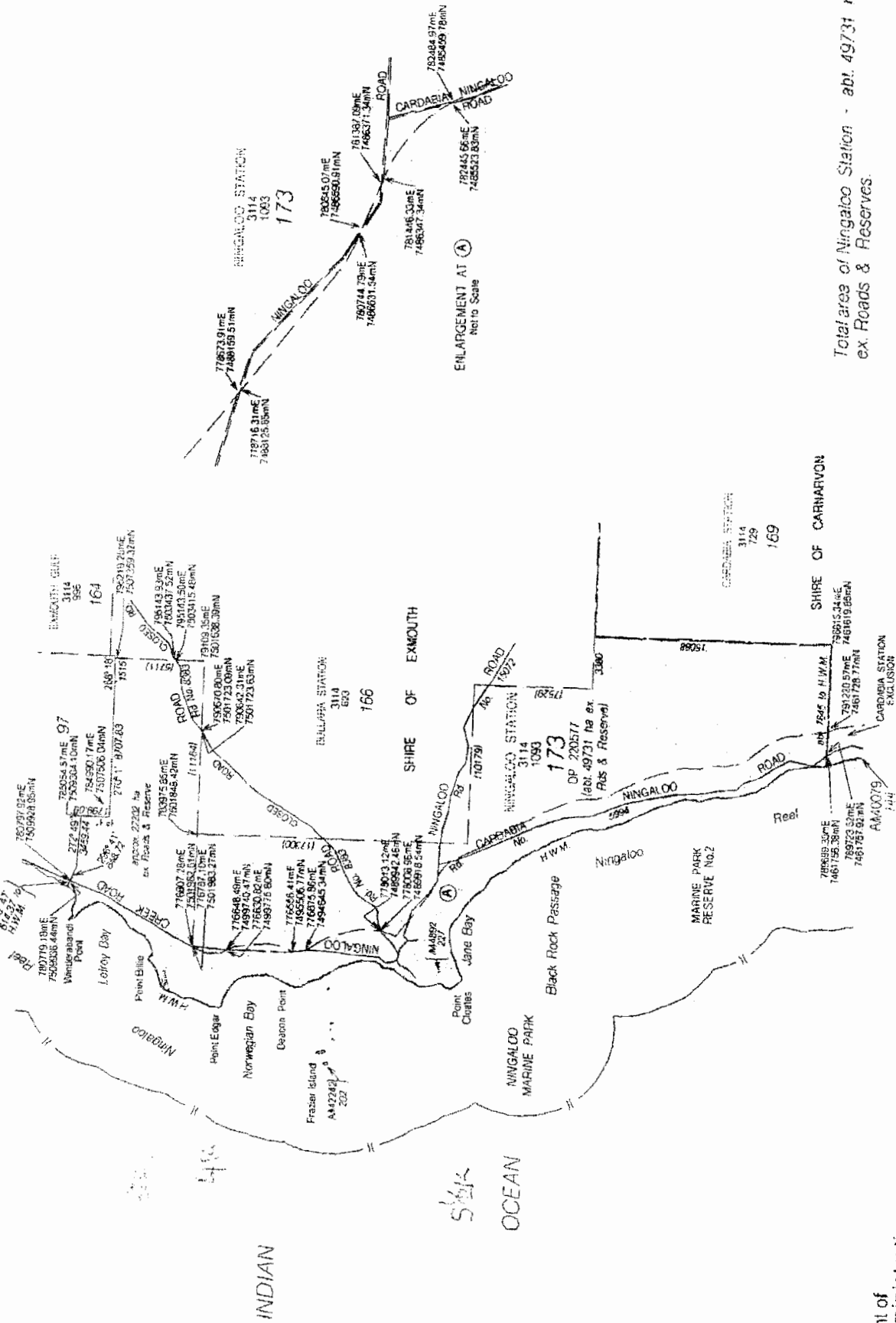
HON ALANNAH MacTIERNAN, MLA  
MINISTER FOR LANDS

27 November 2002

Att

# NINGALOO STATION EXCLUSION

CALM - Area to be excluded from Ningaloo Station - approx 22202 ha



Total area of Ningaloo Station - *abt.* 49731 ha  
ex Roads & Reserves.

**CALM** - EXCLUSION  
**BALANCE**

Department of  
Land Administration



PRODUCED BY STATUTORY SERVICES GROUP 2  
JOB REF: F:\MSPFILES\ARCHIVE\CONCEPT  
PROJECT 2010\NINGALOO021.DGN  
DRAWN BY M.BAILEY

SHIRE OF EXMOUTH AND THE DISTRICT OF LYNDON  
PASTORAL LEASE BOUNDARIES ARE 40 METRES LANDWARD OF H.W.M.  
WATER LINES SHOWN HEREON DO NOT NECESSARILY DEPICT EXACT CADASTRAL BOUNDARIES.  
GRAPHICS SHOWN HEREON DERIVED FROM DOLA SPATIAL CADASTRAL DATA BASE (SCDB) - MAY 2002 (GD84) - ZONE 49  
VALUES OF ANGLES HAVE BEEN ADJUSTED FROM THIS PLAN WHERE THE INTERSECTION OF LINES OF LATITUDE AND LONGITUDE OCCUR